

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

-----

WOODTECH TRADING,	)	
	)	DOCKET NO.: PT-1996-16
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

-----

The above-entitled appeal came on regularly for hearing on the 15th day of August, 1997, in the City of Helena, Montana, pursuant to the order of the State Tax Appeal Board of the State of Montana, (the Board). The notice of said hearing was duly given as required by law setting the cause for hearing. The taxpayer, represented by Steve Morris, general manager, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Pat Dringman, attorney, and Gary Peterson, appraiser, presented testimony in opposition thereto. At this time and place, testimony was presented, exhibits were received, a post hearing schedule determined, and the Board then took the cause under advisement; and the Board having fully considered the testimony, exhibits

and all things and matters presented to it for its consideration by all parties in the Docket, and being well and fully advised in the premises, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property, either by the name WDT Recovery, Inc. (Ex C) or Woodtech Trading, Inc., which is the subject of this appeal and which is described as follows:

Personal property in the form of manufacturing machinery and equipment located at Columbia Falls, Flathead County, MT.

3. At the hearing both parties agreed that even though the appeal is docketed with a 1996 number by this Board the subject appeal is for the 1995 tax year. For the 1995 tax year, the DOR appraised the subject property at a value of \$278,886.

4. The taxpayer appealed to the Flathead County Tax Appeal Board requesting a reduction in value to \$190,734.

5. The County Board adjusted the value of a piece of equipment known as a "molder" by reducing its value \$15,000. The total value was adjusted to \$263,886.

6. The taxpayer then appealed that decision to this Board. The DOR did not appeal that decision to this Board.

7. On February 8, 1995, Steve Morris notified the DOR that in January of 1995 the company known as Woodtech Inc. was liquidated through Chapter 11 bankruptcy. The business was purchased by WDT Recovery Inc. dba Woodtech Trading. A listing of equipment including an appraised value was attached to that letter as exhibit "G". The total indicated value on that attachment is \$252,700. The equipment was valued either by "appraisal" or by "estimate". (Ex 5)

8. A letter from Glacier Bank to Dennis G. Konopatzke dated December 30, 1994 indicates a total purchase of the production equipment of Woodtech from the Small Business Administration for \$242,500. Attached to the letter is another exhibit "G" that demonstrates a total value of the equipment of \$250,500 but also includes a column entitled "SBA Variance" of 75.48% of the total equipment value, for a reduced total of \$190,734. (Ex 6)

9. The taxpayer filed an AB-26 request with the DOR

on July 21, 1995 seeking a review of the value as determined by the DOR. The DOR did not adjust the values as a result of that request, but responded on 12/28/95 that adjustments had been made "per a 7/6/95 field review on specific assets which were indicated to be valued above market value." (Ex 4)

10. The record contains a copy of the Property Reporting Form that was filed by the taxpayer dated 2/8/95. The form was prepared by Steve Morris for the taxpayer. The value of the total property accounts at year end 1994 is listed as \$254,700. (Ex 7)

11. The taxpayer provided a letter dated August 12, 1997 written to Gary Como of Woodtech Trading by a Loan Officer of the Small Business Administration. The letter indicates that the SBA determined there to be \$58,264 in total adjusted receivables included in the total purchase price of Woodtech, Inc. assets of \$250,000. \$38,264.14 was represented as an "inter-company receivable". (Ex A)

12. The taxpayer presented an appraisal performed by the Gardner Auction Service which indicates a fair market value as of August 1, 1997 for the property appraised on July 15, 1997 of \$112,876. This appraisal makes reference to an earlier appraisal dated 3/18/94 as a "walk-thru" appraisal. It

conditions the later appraisal as being the result of "subsequent research" that "drastically affect current market value of this equipment." The "Method of Valuation" in the recent appraisal is described as being the "Fair Market Value." (Ex B)

13. The taxpayer presented a highlighted version of the Business Equipment Valuation received from the DOR. The items highlighted on the copy represent four items of equipment that were not present in 1995. (Ex C)

#### TAXPAYER'S CONTENTIONS

The taxpayer argued that the requested value of \$190,734 is justified based on the SBA purchase documents. Mr. Morris also believes that there is support for the requested amount because of the inclusion in the total purchase price of \$58,264.14 in receivables.

Mr. Morris compared the 1996 DOR value with the 1997 value found in the second Gardner appraisal and pointed out specific differences that amount to a total difference of \$145,668. (Ex D)

Mr. Morris, who demonstrated a familiarity with this property and experience in the operation of, purchase, and selling this type of equipment argued that there are three

events or items that prove the equipment is overvalued by the DOR. The first is the Gardner appraisal of 3/18/94 at \$227,700. The second is the 7/15/97 Gardner appraisal of \$112,876, that was performed at the taxpayers request, because of the experience gained at the local board hearing, to present to this Board. The third is the 1/95 sale to the current owners.

#### DOR CONTENTIONS

Mr. Peterson testified that the original DOR appraisal was done by another appraiser, Gary Spaulding, but he has reviewed the property and the appraisal and is currently responsible for it. The property is valued based upon the original installed cost, trended to current value and then depreciated by a straight line method. The subject property is depreciated using a 10 year life table until a maximum of 20% good is reached.

The original appraisal was performed based on the asset register of the company in 1993. The Small Business Administration took possession of the assets of the prior Woodtech in October of 1994. The company known as WDT

Recovery, Inc., purchased the property in January of 1995. In February of 1995 the DOR received the annual update from Woodtech Trading, Inc. There have been modifications made to the values and items based on: discussions with a Mr. Como, Gary Spaulding being on site in June of 1995, and Mr. Peterson being on site. A further change was denied following the filing of the AB-26 request by the taxpayer (Ex 4).

The DOR contends that the sale upon which the taxpayer relies to establish market value was a bankruptcy sale and is not equated to market value. The Gardner Auction appraisal is described by the DOR as a value for liquidation that would necessitate other costs such as reconditioning, transportation and setting up being added to it so the market value might be achieved. The transaction itself is based on a loan value, a percentage of the value, not the market value itself. The SBA required an equity cash position in addition to the loan proceeds to purchase the equipment.

#### BOARD'S DISCUSSION

The Board observed during the hearing that on two selected pieces of the subject equipment four indications of value in addition to the reported acquired cost are purported to be correct for the year in question. The values of equipment that

are described by Mr. Morris as being durable, and given a 10 year depreciation treatment by the DOR, drop from the reported acquired cost in 1992 in the case of a "Brookman boring machine" of \$28,788 to the latest Gardner Auction Service value of \$4,000.

The appraisal presented by the taxpayer that was performed by Gardner Auction Service for purposes of this appeal fails to provide weight for the burden of proof required here. The appraiser's comments on the exhibit are relevant only to the condition of equipment on the date of the appraisal. They are not relevant to the condition of the equipment on January 1, 1995. It is unknown how the appraiser performing the Gardner appraisal of August 1, 1997 arrived at the value indications. An estimate of "fair market value" is the result when one or more of the three recognized methods of appraisal are used. "Fair market value" is indicated as a method of appraisal in the report. There is no further explanation of what that means to the appraiser, and this Board is not familiar with that as a "method" of appraisal. The Board notes further that there are 67 items listed in the appraisal performed by Gardner Auction service on the appraisal performed for the purchase of this equipment in 1994. There are 57 items in the appraisal

performed August 1, 1997.

The record indicates that \$242,500 was required to "Purchase Equipment from SBA." (Ex A). The \$242,500 was generated by \$187,500 from "WDT Recovery SBA Loan 1-750356-7", \$16,500 from "Thomas Bandy", and \$38,500 from "Dennis Konopatzke". (Ex 6) The SBA loan appears to have been based on an appraisal of the property indicating a value of \$250,500 which was reduced by an "SBA variance" of 75.48% to \$190,734 a "SBA cost amount". This does not support a total value of \$190,734 as requested by the taxpayer, but offers that figure as 75.48% of an appraised value at the time of purchase.

There is no indication in those documents that anything other than equipment is included in those figures. The Board does not question the fact that receivables may have been involved in some way in the financial situation of the former owner and the SBA, but they are not valued in the equipment purchase which stands alone in the valuation of the fixed assets.

The taxpayer completed and furnished what is now exhibit 7 to the DOR indicating a value of \$254,700 on February 8, 1995. That must have been an indication of value from some means by the taxpayer at that time.

It is the opinion of this Board that the based on the

evidence and testimony presented that the taxpayer has failed to meet the burden of proof that the DOR assessment is incorrect and that the appeal shall be denied in part and granted in part.

It is the opinion of the Board that based on the testimony and credibility of the representative of the taxpayer, that those items identified by him as not being present in the year in question shall be removed from the assessment. Those items are highlighted on exhibit C as; 1 hinge machine, 1 material, 1 mitered frames (jigs), and 1 saws.

#### CONCLUSIONS OF LAW

1. 15-8-201, MCA, requires that;

(1).....The department shall assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1.

2. 15-8-301, MCA, states;

(1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1.....

(2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the

statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1.

3. It is true, as a general rule, that the appraisal of the Department of Revenue appraisal is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,(1967)). This Board finds that the evidence presented by the Department of Revenue did support the values assessed.

#### ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Flathead County by the Assessor of said County at the 1995 tax year value determined by reducing the local board decision value by \$6,945, the market value of equipment items not present there in 1995. The value is \$256,941 as determined by this Board.

Dated this 9th day of September, 1997.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

---

PATRICK E. MCKELVEY, Chairman

---

GREGORY A. THORNQUIST, Member

---

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.